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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.REV.P. 82/2023**

RAM KUMAR .....Petitioner

Through: Mr. Kaushal Yadav, Mr. Nandlal Kumar Mishra & Mr. Joginder Singh, Advs.

versus

STATE NCT OF DELHI & ANR. .....Respondents

Through: Mr. Rajkumar, APP for the State

Mr. Kumar Bhawani Shankar, Adv. (through VC)

\+ **CRL.REV.P. 83/2023**

RAM KUMAR .....Petitioner

Through: Mr. Kaushal Yadav, Mr. Nandlal Kumar Mishra & Mr. Joginder Singh, Advs.

versus

STATE NCT OF DELHI & ANR. .....Respondents

Through: Mr. Rajkumar, APP for the State

Mr. Kumar Bhawani Shankar, Adv. (through VC)

\+ **CRL.REV.P. 84/2023&CRL.M.A. 17691/2023**

RAM KUMAR .....Petitioner

Through: Mr. Kaushal Yadav, Mr. Nandlal Kumar Mishra & Mr. Joginder Singh, Advs.

versus

STATE NCT OF DELHI & ANR. .....Respondents

Through: Mr. Rajkumar, APP for

the State
Mr. Kumar Bhawani Shankar, Adv. (through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
% **11.11.2024**

1. The present petitions are filed challenging the common judgment dated 21.12.2022 (‘**impugned judgment**’) passed by the learned Additional Sessions Judge, in Criminal Appeal Nos. 121/2022, 120/2022 and 122/2022 respectively.

2. The learned trial Court, by the impugned judgment, upheld the judgement on conviction dated 29.06.2022 and order on sentence dated 30.06.2022, passed by the learned Metropolitan Magistrate, in CC Nos. 45277/2016, 46081/2016 and 46082/2016 whereby the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881(‘**NI Act**’) and was sentenced to undergo simple imprisonment for a period of three months and to pay a fine of ₹26,17,984/-, and in default of payment of fine, to undergo simple imprisonment for a further period of six months.

3. It is averred that the complainant filed the complaints under the provisions of the NI Act as the post-dated cheques issued by the petitioner/accused in discharge of his liability were dishonoured on presentation and returned back with the remark “Insufficient funds”.

4. The learned counsel for the petitioner submits that the parties have settled the matter with the intervention of Delhi High Court Mediation and Conciliation Centre by way of a Settlement/Compromise Deed dated 21.01.2023. He states that a sum of ₹28,61,000/- has already been paid and the manner in

which the balance amount of ₹23,00,000/- is to be paid has been agreed to in between the parties. He further states that the last pending installment of ₹4,00,000/- is payable in July, 2025 and a sum of ₹1,00,000/- has also been handed over to the complainant today in Court.

5. The petitioner is bound down to the terms of the settlement.

6. The complainant is present in Court and submits that he has no objection if the offence under Section 138 of the NI Act is compounded on the condition that the petitioner fulfills his obligations.

7. Offence under Section 138 of the NI Act is compoundable in nature.

8. Even though an attempt for compounding of the offence under NI Act should be made at the initial stage rather than the later stage, however, there is no bar against seeking compounding of the offence even after conviction [Ref.***Raj Reddy Kallem v. The State of Haryana &Anr.*** **: 2024 INSC 347**, ***K.M Ibrahim v. K.P Mohammed &Anr.*** **: (2010) 1 SCC 798**, etc.].

9. The Hon'ble Apex Court in the case of ***Damodar S. Prabhu v. Sayed Babalal H.*** **: (2010) 5 SCC 663** had highlighted that the compensatory aspect of the proceedings under the NI Act take precedence over the punitive aspect and stipulated certain guidelines for compounding the offences under the NI Act. The relevant portion of the judgment is reproduced hereunder:

> *"**4…** What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions.*

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18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. *There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery.* ***The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute…***

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21. *With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:*

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit.

(c) ***Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.***

> *(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.*
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> ***25.*** *The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end."*
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> (emphasis supplied)

10. In the present case, the parties have settled the matter at the appellate stage. It is relevant to note that the complainant has duly consented to compounding the offence in the present case.

11. In terms of ***Damodar S. Prabhu v. Sayed Babalal H.*** (*supra*), since the application for compounding has been made in revision, a cost of 15% of the total cheque amount may be imposed. The learned counsel for the petitioner submits that the petitioner is not in a position to arrange any more money to be paid as cost and requests that no cost may be imposed.

12. In view of the above, the present petitions are allowed and the impugned judgment as well as well as the judgment on conviction dated 29.06.2022 and the order on sentence dated 30.06.2022, passed in Complaint Case Nos. 45277/2016, 46081/2016 and 46082/2016, are set aside, subject to the petitioner paying a cost of ₹50,000/- to the Delhi High Court Legal Services Committee, within a period of 3 months from date.

13. Proof of deposit of cost to be submitted with the Registry

of this Court.

14. The petitions are disposed of in the aforesaid terms.

15. Pending application(s) also stand disposed of.

16. The complainant is at liberty to file an appropriate application in case the petitioner fails to fulfill its obligations.

17. A copy of this order be placed in all the matters.

AMIT MAHAJAN, J

NOVEMBER 11, 2024
"SS"